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June 20, 2001

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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BY HAND

Magalie Roman Salas, Esquire
Secretary
Federal Communications Commission
The Portals
445 12th Street, SW, Room TWB204
Washington, D.C. 20554

Re: **Pending Petition for Rulemaking
Television Allotments
Knoxville, TN**

Dear Ms. Salas:

On July 17, 2000, there was filed with the Commission a "Petition for Rulemaking" proposing the allocation of NTSC Channel 25 to Knoxville, TN in substitution for NTSC Channel 26 which had been rendered unavailable for assignment as an NTSC facility by reason of its allocation to Knoxville as a DTV allotment. That petition remains pending at this time.

Further to such filing, there is submitted herewith a "SUPPLEMENT TO PETITION FOR RULEMAKING AND FURTHER ALLOTMENT PROPOSAL." Such supplement is submitted on behalf of all of the initial applicants for NTSC Channel 26, all of whom have timely entered into an extant settlement agreement whereby the applicant South Central Communications Corporation (now nominally Knoxville Channel 25, L.L.C.) is to be the surviving applicant for the requested new allocation at Knoxville, TN.

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June 20, 2001
Page 2

Should there be any questions respecting this submission, please communicate with the undersigned or with co-counsel for Knoxville Channel 25, L.L.C., Andrew S. Kersting, Esq., Dickstein Shapiro Morin & Oshinsky LLP, 2101 L Street, NW, Washington, DC 20037-1526, (209) 955-6631.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Edward S. O'Neill", written over a horizontal line.

Edward S. O'Neill
Counsel for
Knoxville, Channel 25, L.L.C.

Enclosures

ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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JUN 20 2001

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)

Amendment of Section 73.606(b))

TV Table of Allotments)

TV Broadcast Stations)

Knoxville, Tennessee)

MM Docket No. _____

RM No. _____

To: Chief, Video Services Division

SUPPLEMENT TO PETITION FOR RULEMAKING
AND
FURTHER ALLOTMENT PROPOSAL

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June 20, 2001

TABLE OF CONTENTS

	Page
Summary	iii
I. Preliminary Statement	2
II. Overview of Supplemental Showings and Further Allotment Proposal.....	2
III. The Proposed Channel 25 NTSC Facility at Knoxville Will Not Cause Prohibited Interference to Class A LPTV Stations	5
A. Station WPDP-LP, Cleveland, Tennessee.....	5
B. Station WKPT-LP, Kingsport, Tennessee	6
IV. There is Good Cause for the Acceptance of This Supplement	8
A. The Potentially Conflicting Class A License Applications Were Filed Long After Petitioners Filed Their Petition	8
B. The Attached Interference Agreements Are Consistent With the <i>Class A Report and Order</i> and Would Serve the Public Interest.....	9
V. Petitioners' Request for a Waiver of the Commission's Spacing Requirements Is Consistent With Section 309(l) of the Communications Act and Would Provide Substantial Public Interest Benefits	10
A. FCC Policy Prohibiting Short-Spaced Allotments	11
B. The FCC's Policy Should Not Be Applied in This Unique and Limited Context in Which the Licensing of NTSC Stations Comes to an End	12
C. The Proposed Allotment of Channel 25 at Knoxville Would Provide Important Public Interest Benefits	14
D. Section 309(l) of the Communications Act Requires the FCC Waive Its Distance Separation Provisions in Order to Facilitate the Grant of the Pending Settlement Proposal	15

	<u>Page</u>
VI. In the Event the FCC Declines to Allot Channel 25 to Knoxville, the Commission Should Grant Petitioners' Alternative Allotment Proposal and Allot DTV Channel 7 to Knoxville So as To Provide for the Long-Proposed New Television Service to that Community	16
A. The Proposed DTV Channel 7 Facility at Knoxville Would Not Cause Prohibited Interference to Any Other Full-Power Television Station....	17
B. The Proposed DTV Channel 7 Facility at Knoxville Would Cause Only Minimal Interference to a Potential Class A LPTV Station.	19
VII. Conclusion	22

SUMMARY

SWMM/Knoxville Corporation, Channel 26, Ltd., and Knoxville Channel 25, L.L.C. (successor-in-interest to South Central Communications Corporation) (collectively, “Petitioners”), filed a Petition for Rulemaking on July 17, 2000, seeking to substitute Channel 25 for the existing Channel 26 NTSC allotment at Knoxville, Tennessee. Petitioners hereby supplement their pending allotment proposal in order to address potential interference concerns involving LPTV Stations WPDP-LP, Cleveland, and WKPT-LP, Kingsport, Tennessee, both of which filed Class A license applications nearly five months after the filing of Petitioners’ rulemaking petition.

As demonstrated herein, the potential interference concerns regarding Stations WPDP-LP and WKPT-LP have been resolved. Station WPDP-LP recently filed an application to move to a new channel in order to avoid any conflict with the proposed Channel 25 NTSC facility at Knoxville. Because the proposed Knoxville station will not cause prohibited interference to Station WKPT-LP, the licensee of WKPT-LP and Knoxville Channel 25, L.L.C., the prevailing applicant under Petitioners’ settlement proposal, have entered into an agreement whereby they each have agreed to accept negligible (if any) predicted interference from the other station. As shown herein, the parties’ interference agreement is consistent with the Commission’s orders in the Class A rulemaking proceeding and would provide substantial public interest benefits.

Although Petitioners’ allotment proposal involves a minor short-spacing to co-channel Station WHIQ(TV), Huntsville, Alabama, the Commission’s general policy prohibiting short-spaced allotments should not be applied in this unique and extremely limited context in which the licensing of analog television stations comes to an end. Therefore, in accordance with Congress’ explicit directive in Section 309(l) of the

Communications Act, the Commission should grant Petitioners' request for a waiver of the Commission's spacing provisions.

Finally, in the event that the Commission erroneously declines to allot Channel 25 to Knoxville, the Commission should grant Petitioners' alternative allotment proposal and substitute DTV Channel 7 for the existing Channel 26 NTSC allotment at Knoxville. As shown herein, Petitioners alternative digital proposal would not cause prohibited interference to any other television station and would provide substantial public interest benefits.

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Amendment of Section 73.606(b))	MM Docket No. _____
TV Table of Allotments)	RM No. _____
TV Broadcast Stations)	
Knoxville, Tennessee)	
To: Chief, Video Services Division		

**SUPPLEMENT TO PETITION FOR RULEMAKING
AND
FURTHER ALLOTMENT PROPOSAL**

SWMM/Knoxville Corporation (“SWMM”), Channel 26, Ltd., and Knoxville Channel 25, L.L.C. (“KC25”)¹ (collectively, “Petitioners”), through their respective counsel, hereby supplement their pending “Petition for Rulemaking,” which was filed on July 17, 2000 (“Petition”), in response to the FCC’s *Public Notice*, 14 FCC Rcd 19559 (1999) (“Mass Media Bureau Announces Window Filing Opportunity for Certain Pending Applications and Allotment Petitions for New Analog TV Stations”) (“*Window Filing Notice*”).² In support of this supplement, the following is stated:

¹ Through a minor amendment filed on November 22, 2000, KC25 became the successor-in-interest to South Central Communications Corporation (“SCCC”), the prevailing applicant under the parties’ pending settlement proposal. SCCC holds a 70% interest in KC25. For purposes of simplicity, the application that originally was filed by SCCC (File No. BPCT-19960920LJ) will be referred to herein as that of KC25.

² On March 9, 2000, the Commission extended the window filing period until July 15, 2000. See *Public Notice*, 15 FCC Rcd 4974 (2000) (“Window Filing Opportunity For Certain Pending Applications and Allotment Petitions For New Analog TV Stations Extended to July 15, 2000”).

I. Preliminary Statement.

As stated in their Petition, Petitioners have pending before the FCC mutually exclusive applications for a new NTSC station to operate on Channel 26 at Knoxville, Tennessee.³ Subsequent to the filing of their applications, Congress, as part of the Balanced Budget Act of 1997, amended the Communications Act of 1934, as amended (the “Communications Act”), and directed the Commission to waive certain of its rules to encourage settlements among mutually exclusive broadcast applicants.⁴ Accordingly, on January 28, 1998, Petitioners filed a “Joint Request for Approval of Universal Settlement” requesting approval of two separate settlement agreements which contemplated the grant of KC25’s application and the dismissal of SWMM’s and Channel 26, Ltd.’s pending applications.

In order to effectuate their pending settlement proposal, on July 17, 2000, Petitioners filed their pending Petition seeking to substitute Channel 25 for the existing Channel 26 NTSC allotment at Knoxville, Tennessee. As explained in the Petition, Petitioners’ filed their allotment proposal in response to the *Window Filing Notice* because KC25’s pending application for a new NTSC facility to operate on Channel 26 at Knoxville was effectively displaced by the Digital Table of Allotments. Specifically, the FCC assigned DTV Channel 26 to an existing Knoxville television station as its paired digital allotment, which rendered the Channel 26 NTSC allotment unavailable for use.

II. Overview of Supplemental Showings and Further Allotment Proposal.

At the time Petitioners filed their Petition on July 17, 2000, the proposed allotment of Channel 25 to Knoxville complied with all relevant FCC criteria, with the sole

³ See File Nos. BPCT-19890405KF; BPCT-19890913KG, and BPCT-19960920LJ.

⁴ See 47 U.S.C. §309(l).

exception of a minor short-spacing to co-channel Station WHIQ(TV), Huntsville, Alabama (discussed in greater detail herein). Petitioners proposal was not precluded by any existing television operation or pending application. Since the filing of the Petition, however, Petitioners have become aware that subsequently-filed Class A license applications by co-channel LPTV Stations WPDP-LP, Cleveland, Tennessee, and WKPT-LP, Kingsport, Tennessee, raise potential interference concerns with respect to their allotment proposal.

The purpose of this supplement is to demonstrate that the potential conflicts with Stations WPDP-LP and WKPT-LP have been resolved consistent with the public interest, and that the operation of those LPTV stations should not preclude the allotment of Channel 25 to Knoxville. Station WPDP-LP has agreed to move to a new channel in order to avoid a conflict with KC25's proposed operation on Channel 25 at Knoxville. In addition, after a thorough engineering analysis of the relevant technical considerations, Station WKPT-LP and KC25 have entered into an interference agreement pursuant to which each party has agreed to accept the negligible predicted interference that may result from the operation of the other station.

For the reasons stated herein as well as those in their pending Petition, Petitioners firmly believe that Channel 25 should be substituted for the existing Channel 26 NTSC allotment at Knoxville, and that it would constitute error on the part of the Commission if their allotment proposal were not granted. Nevertheless, even assuming, *arguendo*, that the Commission should refuse to allot Channel 25 to Knoxville, this supplement demonstrates that DTV Channel 7 can be allotted to Knoxville in accordance with the Commission's allotment criteria, and that it too would serve as a satisfactory substitute for the existing Channel 26 NTSC allotment. Petitioners' alternative proposal to allot DTV Channel 7 to Knoxville not only would bring a first full-service, digital-only

signal to the Knoxville community, but it would serve an important public interest by helping to promote the transition from analog to digital television in the Knoxville television market.

The proposed allotment of DTV Channel 7 to Knoxville may raise potential interference concerns with respect to the proposed Class A operation of co-channel LPTV Station WKTP-LP, Gate City/Weber City, Virginia. However, based on an engineering analysis of the proposed digital operation at Knoxville, WKTP-LP and KC25 have determined that the operation of WKTP-LP and the proposed DTV Channel 7 facility at Knoxville would cause no more than negligible predicted interference to one another, and, therefore, have entered into an agreement to accept such negligible interference.

As indicated above, Petitioners' allotment proposal has been pending before the FCC for nearly 11 months. Since the filing of the Petition, potential interference concerns have arisen regarding the proposed allotment of Channel 25 to Knoxville due to subsequently-filed Class A applications by nearby co-channel LPTV stations. Nevertheless, set forth below is a detailed analysis demonstrating that each of those interference concerns has been resolved in a manner consistent with the public interest. Due to the long pendency of their underlying applications, settlement proposal, and Petition, Petitioners respectfully request that the FCC expedite the processing of this supplement and pending Petition so that KC25 soon may provide a new and long-awaited television service to the community of Knoxville, Tennessee, and the surrounding area.

III. The Proposed Channel 25 NTSC Facility at Knoxville Will Not Cause Prohibited Interference to Class A LPTV Stations.

A. Station WPDP-LP, Cleveland, Tennessee.

The proposal to substitute Channel 25 for the existing Channel 26 NTSC allotment at Knoxville creates a potential interference concern with respect to co-channel LPTV Station WPDP-LP (formerly WPBD-LP and WXMS-LP), Cleveland, Tennessee. As demonstrated below, however, the potential conflict with Station WPDP-LP has been resolved because the LPTV station has filed an application to move to a new channel.

On January 28, 2000, WDSI License Corp., the licensee of Station WPDP-LP, filed a timely statement of eligibility in which it certified that WPDP-LP was in full compliance with all of the statutory requirements and operational standards for Class A status. On this basis, the Commission determined that WPDP-LP was eligible to file a Class A license application. *See Public Notice*, 15 FCC Rcd 9480 (Mass Med. Bur. 2000) (“Certificates of Eligibility for Class A Television Station Status”). WDSI License Corp. filed a Class A license application for WPDP-LP on December 7, 2000 (File No. BLTTA-20001207ADR), which was long after Petitioners filed their Petition on July 17, 2000, seeking to substitute Channel 25 for the existing Channel 26 allotment at Knoxville. It appears that WPDP-LP’s proposed Class A operation on Channel 25 at Cleveland, Tennessee, would receive predicted interference from KC25’s proposed Channel 25 NTSC facility at Knoxville.

KC25 filed a Petition to Deny WPDP-LP’s Class A license application on January 19, 2001, in which it argued that Station WPDP-LP is not entitled to Class A status. Specifically, KC25 contended that during the 90-day period immediately preceding

the enactment of the Community Broadcasters Protection Act of 1999 (the “CBPA”), WPDP-LP operated merely as a translator of WDSI License Corp.’s full-service Station WDSI-TV, Chattanooga, Tennessee.⁵ WPDP-LP’s Class A application and KC25’s Petition to Deny currently remain pending before the FCC.

In an effort to resolve the apparent conflict between Petitioners’ rulemaking proposal and WPDP-LP’s pending Class A license application, KC25 and WDSI License Corp. entered into a Settlement Agreement on June 6, 2001.⁶ Pursuant to that agreement, WPDP-LP has filed an application with the FCC seeking to move to a new channel in order to eliminate the conflict with KC25’s proposed operation on Channel 25 at Knoxville.⁷ In consideration for WPDP-LP’s willingness to change channels, KC25 has agreed to reimburse WPDP-LP for some of the expenses it will incur in connection with its proposed channel change. KC25 also has agreed to request the dismissal of its pending Petition to Deny WPDP-LP’s Class A license application.

B. Station WKPT-LP, Kingsport, Tennessee.

As stated above, the proposed allotment of Channel 25 at Knoxville also raises interference concerns with respect to co-channel LPTV Station WKPT-LP, Kingsport, Tennessee. The licensee of Station WKPT-LP, Holston Valley Broadcasting Corporation

⁵ As stated in Petitioners’ Petition, Exhibit 1 to Station WPDP-LP’s (then WXMS-LP’s) Class A eligibility statement reflected that, during the 90-day period immediately preceding the enactment of the CBPA and continuing through January 2000, Station WPDP-LP operated as a translator of Station WDSI-TV, Chattanooga. *See* Petition, p. 5, n. 9.

⁶ A copy of the parties’ “Joint Petition for Approval of Settlement Agreement” and accompanying settlement agreement, filed June 7, 2001, are appended hereto as Attachment A.

(“Holston Valley”), filed a Class A license application for WKPT-LP on December 11, 2000 (File No. BLTTA-20001211AEW), which also was long after Petitioners filed their instant Petition.

Upon discovering the apparent conflict between the two proposals, WKPT-LP commissioned Jules Cohen, P.E., to conduct an engineering study to determine whether the proposed Channel 25 NTSC facility at Knoxville would cause harmful interference to Station WKPT-LP. As demonstrated in his attached engineering statement,⁸ Mr. Cohen conducted an FLR study using a Longley-Rice irregular terrain model which revealed that the proposed Channel 25 NTSC facility at Knoxville would cause only negligible predicted interference to WKPT-LP, and WKPT-LP would not cause any predicted interference to the proposed NTSC facility at Knoxville. Specifically, the proposed Knoxville Channel 25 facility would increase the NTSC interference loss to WKPT-LP only from 6.2% to 6.7%. This predicted interference loss of 0.5% is within the Commission’s rounding tolerance and should be considered negligible.⁹

In light of Mr. Cohen’s engineering study, WKPT-LP amended its Class A license application to advise the FCC that it has no objection to Petitioners’ pending Petition seeking the allotment of Channel 25 to Knoxville. WKPT-LP also stated that it is willing to accept the negligible predicted interference that it may receive from the proposed

⁷ See File No. BPTTL- 20010607ABP.

⁸ Mr. Cohen’s engineering statement is contained in Attachment B hereto.

⁹ See *Report and Order*, in MM Docket No. 00-10, *Establishment of a Class A Television Service*, 15 FCC Rcd 6355, 6386, ¶74 (2000) (“*Class A Report and Order*”) (NTSC applicants allowed a rounding tolerance of 0.5% interference in protecting Class A stations).

Knoxville station, provided that KC25 is willing to accept whatever minimal interference it may receive from WKPT-LP.¹⁰

IV. There Is Good Cause For the Acceptance of This Supplement.

A. The Potentially Conflicting Class A License Applications Were Filed Long After Petitioners Filed Their Petition.

Station WPDP-LP filed its statement of eligibility for Class A status prior to the filing of Petitioners' Petition on July 17, 2000. Petitioners reasonably believed, however, that WPDP-LP was not entitled to Class A status because, as stated above, Exhibit 1 to WPDP-LP's eligibility statement indicated that the LPTV station functioned merely as a translator of its licensee's full-service Station WDSI-TV, Chattanooga. Moreover, although WPDP-LP could have filed its Class A license application as early as May 31, 2000,¹¹ it did not file its application until December 7, 2000 (File No. BLTTA-20001207ADR), which was long after the filing of the instant Petition. Due to the substantial question concerning whether WPDP-LP is entitled to Class A status, and the fact that the LPTV station did not file its Class A license application until nearly five months after the July 17, 2000, filing deadline for amendments to pending NTSC proposals,¹² it would be unreasonable to

¹⁰ A copy of Holston Valley's amendment to WKPT-LP's pending Class A application, filed January 19, 2001, is appended hereto as Attachment B. To facilitate the processing of the WKPT-LP Class A license application, KC25 advised the Commission that it will accept whatever minimal interference to the proposed Channel 25 NTSC facility at Knoxville that may be caused by Station WKPT-LP's co-channel operation at Kingsport. See Attachment C hereto.

¹¹ See *Class A Report and Order*, 15 FCC Rcd at 6404, ¶128; 61 Fed.Reg. 21681 (May 1, 2001).

¹² See *Window Filing Notice*, 14 FCC Rcd 19559, n. 1 (1999), as extended by *Public Notice*, 15 FCC Rcd 4974 (2000) ("Window Filing Period for Certain Pending Applications and Allotment Petitions for New Analog TV Stations Extended to July 15, 2000").

require Petitioners to have protected what was merely a potential Class A application at the time they filed their Petition.

Like WPDP-LP, Station WKPT-LP, Kingsport, did not file its Class A license application until December 11, 2000 (File No. BLTTA-20001211AEW), which was long after Petitioners filed their Petition seeking to substitute Channel 25 for the existing Channel 26 allotment at Knoxville. There was no reason for Petitioners' allotment proposal to protect WKPT-LP because (i) the LPTV station's potential Class A license application had not yet been filed, and (ii) Petitioners did not believe that the proposed allotment of Channel 25 at Knoxville would cause prohibited interference to WKPT-LP's co-channel operation at Kingsport due to intervening terrain.

B. The Attached Interference Agreements Are Consistent With the Class A Report and Order and Would Serve the Public Interest.

In the *Class A Report and Order*, the Commission stated that it would permit Class A stations to enter into interference and/or relocation agreements with full-service television stations, and would grant applications submitted pursuant to those agreements if it found them to be in the public interest.¹³ In accordance with the Commission's statements in the Class A rulemaking proceeding, Station WPDP-LP and KC25 have entered into an interference agreement that resolves the potential conflict between their pending applications. Pursuant to that agreement, WPDP-LP has filed an application to move to an alternative channel in order to avoid potential interference concerns with respect to the proposed new NTSC station at Knoxville. FCC approval of the parties' interference agreement -- pursuant to which KC25 will request the dismissal of its pending

¹³ 15 FCC Rcd at 6386 ¶75; see also *Memorandum Opinion and Order on Reconsideration*, FCC 01-123, ¶77 (released April 13, 2001) ("*Reconsideration Order*").

Petition to Deny WPDP-LP's Class A license application -- would serve the public interest because it would permit the authorization of a new full-service television station at Knoxville, and, at the same time, permit WPDP-LP to obtain Class A status on an alternative channel without further delay.

Furthermore, as demonstrated above, the proposed Channel 25 NTSC facility at Knoxville would cause no more than 0.5% predicted interference to Station WKPT-LP, Kingsport, and WKPT-LP would not cause any interference to the proposed new NTSC station at Knoxville. Accordingly, pursuant to the *Class A Report and Order* and *Reconsideration Order* in the same proceeding, WKPT-LP and KC25 have entered into an interference agreement that would serve the public interest because it would permit the authorization of a new full-service television station at Knoxville and facilitate the grant of WKPT-LP's pending Class A license application. Therefore, because the attached interference agreements would serve the public interest, Petitioners respectfully request that the Commission approve those agreements, substitute Channel 25 for the existing Channel 26 NTSC allotment at Knoxville, and grant the Class A license applications of Stations WPDP-LP and WKPT-LP.

V. Petitioners' Request for a Waiver of the Commission's Spacing Requirements Is Consistent With Section 309(l) of the Communications Act and Would Provide Substantial Public Interest Benefits.

As stated in the Petition, the proposed allotment of Channel 25 at Knoxville is short-spaced to co-channel Station WHIQ(TV), Huntsville, Alabama, by 5.8 kilometers.¹⁴ Accordingly, Petitioners submitted a request for waiver of Sections 73.610 and 73.685(e)

¹⁴ See Petition, pp. 3-4 and supporting Engineering Statement, pp. 1-2 and Exhibit B thereto.

of the Commission's rules concerning this short-spacing. As demonstrated therein, the proposed Channel 25 operation at Knoxville would cause less than 0.5% interference to Station WHIQ, which is within the FCC's rounding tolerance.¹⁵ Furthermore, the allotment reference point for the proposed Channel 25 NTSC allotment at Knoxville represents an available transmitter site from which the proposed new station can operate at Sharp's Ridge. The 5.8 kilometer short-spacing between the proposed allotment reference point and Station WHIQ will not be any greater at the application stage because, as demonstrated in the Petition, Sharp's Ridge represents the only available transmitter site for the proposed new station at Knoxville.¹⁶ In addition to the foregoing factors, which alone warrant a grant of the requested waiver, Petitioners demonstrate herein that the Commission's general policy prohibiting short-spaced allotments should not in any event be applied in this narrow and plainly unique context in which the licensing of NTSC stations comes to an end.

A. FCC Policy Prohibiting Short-Spaced Allotments.

The Commission's traditional adherence to a fully-spaced allotment scheme has been rooted in its well-established policy of "preserving the integrity of the Table of Allotments and the mileage separation criteria upon which the Table is based."¹⁷ The Commission has explained that "[s]trict adherence to the spacing requirements reflected in the Table is 'necessary . . . in order to provide a consistent, reliable and efficient scheme of

¹⁵ See Petition, p. 4, citing Engineering Statement, pp. 2-3; *Class A Report and Order*, 15 FCC Rcd at 6386, ¶74.

¹⁶ See Petition, supporting Engineering Statement, p. 4.

[allotments].”¹⁸ In applying this principle, the Commission has required that the public interest benefits of a short-spaced allotment proposal outweigh the public interest benefit of maintaining the minimum spacing rules.¹⁹ Where the proponent of a new allotment is unable to demonstrate a compelling need for departing from the established distance separation standards, the Commission generally has not granted a waiver of the minimum spacing rules for allotment purposes. *Id.* Nevertheless, the Commission has granted short-spaced allotments in cases involving unusual circumstances,²⁰ such as those presented by the instant Petition.

B. The FCC’s Policy Should Not Be Applied in this Unique and Limited Context in Which the Licensing of NTSC Stations Comes to an End.

The FCC’s longstanding rationale for prohibiting short-spaced allotments – preserving the integrity of the NTSC Table of Allotments – has little, if any, relevance in this unique context in which the licensing of NTSC stations comes to an end. Indeed, Petitioners’ pending NTSC proposal represents what will be one of the last new analog television stations. The Commission no longer needs to strictly adhere to the minimum

¹⁷ *Chester and Wedgefield, South Carolina*, 5 FCC Rcd 5572 (1990).

¹⁸ *In the Matter of Amendment of Section 73.606(b), Table of Allotments, TV Broadcast Stations (Pueblo, Colorado), Report and Order*, 10 FCC Rcd 7662, 7667 (1999) (quoting *Chester and Wedgefield, South Carolina*, 5 FCC Rcd at 5572), *vacated and remanded on other grounds, Sangre de Cristo Communications, Inc. v. FCC*, 139 F.3d 953 (D.C. Cir. 1998), *affirmed on remand*, 16 Comm. Reg. (P&F) 610 (1999) (“*Pueblo, Colorado*”).

¹⁹ *See Pueblo, Colorado*, 10 FCC Rcd at 7667, citing *London, Kentucky*, 7 FCC Rcd 5936, 5937 (Mass Med. Bur. 1992).

²⁰ *See, e.g., Petition for Rule Making to Amend Television Table of Assignments to Add New VHF Stations in the Top 100 Markets and to Assure that the New Stations Maximize Diversity of Ownership, Control and Programming*, BC Docket No. 20418, *Report and Order*, 81 FCC 2d 233 (1980) (“*VHF Top 100 Markets*”), *recon. denied*, 90 FCC 2d 160 (footnote continued on next page)

distance separation requirements because no further NTSC allotment proposals can be filed.²¹ Therefore, the Commission's interest in preserving the integrity of the NTSC Table should be given little, if any, weight in this narrow context because the pending Petition represents one of the last analog allotment proposals that the Commission will ever process.

Furthermore, the "integrity" of the NTSC Table of Allotments was completely eviscerated by the paired digital allotments, which violate the distance separation requirements to a substantial degree. In assigning a paired DTV channel to all eligible NTSC stations, the Commission was forced to forego the minimum distance separation requirements due to the shortage of available channels, which resulted in many substantial co- and adjacent-channel short-spacings between NTSC and DTV allotments. The Commission therefore made the conscious decision to forfeit the integrity of the NTSC Table and base its digital allotment scheme primarily on interference criteria. As a result, the Commission's policy of attempting to preserve the integrity of the NTSC Table no longer can serve as the basis for prohibiting short-spaced allotments because the "integrity" of the Table no longer exists. Indeed, at this final stage in the licensing of new analog television stations, the FCC's overriding concern should be one of interference, rather than attempting to preserve the interstation separation standards which were effectively

(1982), *aff'd sub nom. Springfield Television of Utah, Inc. v. FCC*, 710 F.2d 620 (10th Cir. 1983).

²¹ The deadline for filing rulemaking petitions seeking the allotment of new NTSC stations was July 25, 1996. *Advanced Television Systems and Their Impact on the Existing Television Broadcast Service, Sixth Report and Order* in MM Docket No. 87-268, 12 FCC Rcd 14588, 14635-36, ¶105 (1997).

destroyed by the DTV Table of Allotments and are of marginal benefit now that no further allotment proposals can be filed for new NTSC stations.

C. The Proposed Allotment of Channel 25 at Knoxville Would Provide Important Public Interest Benefits.

As demonstrated in the Petition, the proposed allotment of Channel 25 to Knoxville would provide substantial public interest benefits. Specifically, the proposed allotment provides the Commission with an opportunity to help foster the development of new national television networks such as the WB Television Network (“The WB”), the United Paramount Network (“UPN”), PaxNet, and emerging Spanish-language networks by providing an additional competitive broadcast outlet in a top 100 television market²² with which to establish a primary affiliation.²³ In addition, the allotment of Channel 25 to Knoxville would (i) bring a new local television service to 931,082 viewers in the Knoxville area, (ii) promote ownership diversity in the Knoxville television market, and (iii) increase competition in the local advertising market. Indeed, in light of the Commission’s relaxation of the local television ownership rule and the increasing consolidation in the

²² The Knoxville market currently is ranked as the 63rd television market. *See Broadcasting & Cable*, p. 246 (2000).

²³ The WB and UPN have explained to the Commission in a variety of proceedings that one of their primary challenges in establishing themselves as a nationwide network has been finding a sufficient number of stations with which to affiliate. *See, e.g.*, Comments of The WB Television Network, *Establishment of a Class A Television Service*, MM Docket No. 00-10 (filed Feb. 10, 2000); Comments and Reply Comments of The Warner Bros. Television Network, *Review of the Commission’s Regulations Governing Programming Practices of Broadcast Television Network and Affiliates*, MM Docket No. 95-92 (filed Oct. 30, 1995, Nov. 27, 1995); Reply Comments of The Warner Bros. Television Network, *Reexamination of The Policy Statement in Comparative Broadcast Hearings*, GC Docket No. 92-52 (filed Aug. 22, 1994); Comments of the UPN, *Review of the Commission’s Regulations Governing Programming Practices of Broadcast Television Networks and Affiliates*, MM Docket No. 95-92 at 21-22 (filed Oct. 30, 1995).

broadcast industry, the public interest benefits that would result from Petitioners' allotment proposal have even more importance in today's broadcast environment than those that existed at the time the *Interim Policy*²⁴ and *VHF Top 100 Markets* were adopted.

D. Section 309(1) of the Communications Act Requires the FCC to Waive Its Distance Separation Provisions in Order to Facilitate the Grant of the Pending Settlement Proposal.

Petitioners' respective applications for a new television station at Knoxville were all filed on or before September 20, 1996.²⁵ Section 309(1) of the Communications Act provides that with respect to competing applications for new broadcast stations that were filed before July 1, 1997, the Commission shall:

waive any provisions of its regulations necessary to permit such persons to enter an agreement to procure the removal of a conflict between their applications during the 180-day period beginning on the date of enactment of the Balanced Budget Act of 1997.

47 U.S.C. §309(1)(3) (emphasis added). Petitioners filed their settlement proposal on January 28, 1998,²⁶ which was prior to the 180-day statutory deadline. Therefore, Petitioners respectfully submit that, pursuant to Congress' explicit directive to the FCC that it waive any of its rules necessary to permit parties to effectuate a settlement proposal filed pursuant to the 1997 Budget Act, the Commission should grant their request for waiver of the spacing requirements. Indeed, as demonstrated in the Petition, (i) the proposed Channel 25 facility at Knoxville would cause less than 0.5% predicted interference to the only short-spaced station, which is within the Commission's rounding tolerance; (ii)

²⁴ See *Interim Policy on VHF Television Channel Assignments*, 21 RR 1695 (1961), *recon. denied*, 21 RR 1710a (1961) ("*Interim Policy*").

²⁵ See File Nos. BPCT-19890405KF; BPCT-19890913KG; and BPCT-19960920LJ.

²⁶ See Petitioners' "Joint Request for Approval of Universal Settlement," filed January 28, 1998.

the 5.8 kilometer (3.6 mile) short-spacing, which will not be increased at the application stage, is well within the range of short-spacings that the Commission previously has approved in the application context;²⁷ and (iii) the FCC previously has waived its spacing requirements in the allotment context where, as in this case, a grant of the requested waiver would result in substantial public interest benefits.²⁸

VI. In the Event the FCC Declines to Allot Channel 25 to Knoxville, the Commission Should Grant Petitioners' Alternative Allotment Proposal and Allot DTV Channel 7 to Knoxville so as to Provide for the Long-Proposed New Television Service to that Community.

For the reasons stated above as well as those in the pending Petition, it would constitute error for the Commission not to allot Channel 25 to Knoxville in accordance with Petitioners' request. Nevertheless, even assuming, *arguendo*, that the Commission should elect not to allot Channel 25 to Knoxville, as an alternative proposal, Petitioners hereby propose to substitute DTV Channel 7 for the existing Channel 26 NTSC allotment at Knoxville.

²⁷ See, e.g., *Sarkes Tarzian, Inc.*, 6 FCC Rcd 2465 (1991) (8.3 mile short-spacing approved); *Clay Broadcasting Corp.*, 51 RR 2d 916 (1982) (5 mile short-spacing approved).

²⁸ See *Interim Policy*, 21 RR 1695 (1961) (Commission noted that short-spaced allotment stations could provide "equivalent protection" to existing stations by reducing their effective radiated power, using a reduced antenna height, using a directional antenna, or employing a combination of these techniques); *VHF Top 100 Markets*, 81 FCC 2d 233 (1980) (because the Commission required the drop-ins to provide equivalent protection, the potential interference to existing short-spaced stations would be no greater than any other allotment that had been made since the Table was created) (subsequent history omitted).

A. The Proposed DTV Channel 7 Facility at Knoxville Would Not Cause Prohibited Interference to Any Other Full-Power Television Station.

As demonstrated in the attached engineering statement of Neil Smith,²⁹ Petitioners' alternative proposal to allot DTV Channel 7 to Knoxville would bring a new full-service, digital-only facility to the Knoxville community which would encompass 1,354,181 persons within its digital service contour. *See* Attachment D, p. 2. Moreover, in addition to providing the substantial public interest benefits set forth in Section V(C) above, the allotment of DTV Channel 7 to Knoxville would serve the important public interest of helping promote the transition from analog to digital television because the digital-only facility would encourage residents of the Knoxville area to purchase digital receivers and/or digital converter boxes.³⁰

As reflected in Mr. Smith's attached engineering statement, the proposed Channel 7 DTV facility at Knoxville would cause 0.7% predicted interference to a co-channel DTV allotment for Station WLJC-DT, Beattyville, Kentucky. *See* Attachment D, Exhibit A. However, the proposed Knoxville DTV facility would cause less than 0.5% predicted interference to both (i) the facilities authorized by an existing construction permit for WLJC-DT (*see* File No. BPCDT-19990127KI), and (ii) the facilities proposed in WLJC-DT's pending modification application, filed December 3, 1999 (File No. BMPCDT-19991203ABV). *Id.* Moreover, as reflected in a recent amendment to WLJC-DT's pending modification application, WLJC-DT does not intend to operate from the

²⁹ The first of Mr. Smith's supporting engineering statements is appended hereto as Attachment D.

³⁰ Promoting the transition from analog to digital television is an important public interest benefit. By encouraging viewers in the Knoxville area to purchase digital receivers or converter boxes, the proposed digital-only facility would help facilitate the end of the transition period in the Knoxville market so that it occurs much closer to the scheduled termination date of December 31, 2006, than many industry observers currently anticipate. *See* 47 U.S.C. §309(j)(14)(A) and (B).

reference point of its digital allotment, but, rather, from the new transmitter site proposed in its pending modification application. From WLJC-DT's new transmitter site, the proposed DTV facility at Knoxville would cause less than 0.5% predicted interference to WLJC-DT, which is within the Commission's rounding tolerance. Therefore, the proposed Channel 7 DTV facility at Knoxville will not cause prohibited interference to Station WLJC-DT.

To the extent that a waiver may be required with respect to the negligible amount of predicted interference that the proposed Knoxville DTV station may cause to WLJC-DT's allotment reference point, it is hereby requested. Petitioners respectfully submit that the substantial public interest benefits that would result from the proposed Channel 7 DTV facility at Knoxville significantly outweigh the Commission's interest in strictly adhering to its 0.5% rounding tolerance especially where, as here, WLJC-DT will not operate from its allotment reference point, and the 0.2% interference deficiency will not be any greater at the application stage because the proposed transmitter site at Sharp's Ridge represents the only available transmitter site for the Knoxville DTV facility.³¹ Therefore, consistent with Congress' explicit directive in Section 309(l) of the Communications Act, the Commission should waive its 0.5% rounding tolerance with respect to the proposed Channel 7 DTV allotment at Knoxville and the reference point for the co-channel DTV allotment at Beattyville, Kentucky.

³¹ The proposed Knoxville DTV station will operate from Sharp's Ridge because it is necessary for the digital station to co-locate with adjacent-channel Station WVLT(TV), Knoxville, which operates on NTSC Channel 8 from Sharp's Ridge.

B. The Proposed DTV Channel 7 Facility at Knoxville Would Cause Only Minimal Interference to a Potential Class A LPTV Station.

The proposed digital operation on Channel 7 at Knoxville would cause predicted interference to co-channel Station WKTP-LP, Gate City/Weber City, Virginia, which filed a statement of eligibility for Class A status. The FCC dismissed WKTP-LP's eligibility statement on June 7, 2000, however, finding that, during the 90-day period immediately preceding the enactment of the CBPA, WKTP-LP operated merely as a translator of the licensee's parent Station WKPT-TV, Channel 19, Kingsport, Tennessee.³² WKTP-LP filed a Petition for Reconsideration of the dismissal of its Class A eligibility statement on July 7, 2000, which currently remains pending.

In the event that WKTP-LP's reconsideration petition is granted and the LPTV station is awarded Class A status, the proposed allotment of DTV Channel 7 at Knoxville and the operation of Station WKTP-LP at Gate City/Weber City would appear to be mutually exclusive. As a result, Station WKTP-LP and KC25 have entered into an interference agreement pursuant to which each has agreed to accept a minimal amount of predicted interference from the other station.³³

As demonstrated in Mr. Smith's attached engineering statement addressing the interference relationship between the proposed Knoxville DTV facility and WKTP-LP,³⁴ the proposed digital operation on Channel 7 at Knoxville would cause only minimal interference to Station WKTP-LP. There currently are 27,510 persons residing within WKTP-LP's protected service (68 dBu) contour. The proposed DTV Channel 7 facility at

³² See *Public Notice*, 15 FCC Rcd 9503 (Mass Med. Bur. 2000) ("Dismissal of TV Translator Licensee Certificates of Eligibility for Class A Television Station Status").

³³ The parties' "Memorandum of Agreement," dated May 22, 2001, is appended hereto as Attachment E.

³⁴ Mr. Smith's second engineering statement is appended hereto as Appendix F.

Knoxville potentially would cause predicted interference to 2,634 of those persons, or 9.6% of the total population within WKTP-LP's protected service contour.³⁵ However, as reflected in the parties' attached interference agreement, the 9.6% predicted interference figure substantially overstates the amount of interference that WKTP-LP actually would receive from the proposed digital station at Knoxville.

As shown in the attached engineering statement, no people reside in two of the areas in which the proposed DTV Channel 7 facility at Knoxville is predicted to cause interference to WKTP-LP. *See* Attachment F, p. 1 and Figure 1. Although the proposed digital station would cause predicted interference to additional areas south of the WKTP-LP transmitter, Mr. Smith's Longley-Rice studies demonstrate that people who reside within those predicted interference areas are well within the Grade B contour of Station WKPT-TV, Kingsport, and receive the off-air signal of the parent station. *Id.*, pp. 1-2 and Figure 2. Indeed, the reason that Holston Valley entered into the attached interference agreement concerning the proposed DTV Channel 7 facility at Knoxville is that the new DTV station would not cause any real-world interference to WKTP-LP because all of the people within the predicted interference areas receive a Grade B signal from the licensee's full-power station at Kingsport, which airs substantially the same programming. *Id.*

Furthermore, as also demonstrated in Mr. Smith's attached engineering statement, WKTP-LP would cause only a negligible amount of predicted interference to the proposed digital Channel 7 facility at Knoxville. As stated above, the proposed DTV station at Knoxville would serve 1,354,181 persons within its digital service contour.

³⁵ *See* Attachment F, p. 1. Station WKTP-LP has contemplated raising its authorized effective radiated power ("ERP") from 10 watts to 30 watts. If WKTP-LP were to triple its authorized ERP to 30 watts, it would provide service to 51,213 persons within its protected service contour, 4,585 of whom (9.0%) potentially would receive predicted interference from the proposed Channel 7 digital facility at Knoxville. *Id.*

WKTP-LP would cause interference to 4,120 persons within that contour, which is only 0.3% of the total service-area population. Moreover, out of those 4,120 persons who may receive predicted interference from WKTP-LP, only 140 (3.4%) of those persons reside within the Knoxville DMA. The remaining 3,980 persons (96.6%) who may receive predicted interference from WKTP-LP reside in an adjacent television market, and, thus, are substantially less likely to view the proposed Knoxville DTV station. *See* Attachment F, p. 2.

As stated above, WKTP-LP has contemplated filing an application to increase its ERP to 30 watts, which would triple its currently authorized power. If the FCC were to grant such an application, the LPTV station would then cause predicted interference to 6,171 persons, or 0.5% of the total population served by the proposed digital station. This amount of predicted interference also falls within the Commission's rounding tolerance and should be considered negligible.³⁶ Further, out of these 6,171 people who may receive predicted interference from WTKP-LP, only 760 persons (12.3%) reside within the Knoxville DMA. The remaining 5,411 persons (87.7%) reside in an adjacent television market and are substantially less likely to view the proposed Knoxville DTV station. Therefore, as Mr. Smith concluded in his attached engineering statement, "[t]hese interference effects are clearly negligible." *See* Attachment F, p. 2.

³⁶ *Class A Report and Order*, 15 FCC Rcd at 6386, ¶74.

VII. Conclusion.

Petitioners' pending Petition seeking to substitute Channel 25 for the existing Channel 26 NTSC allotment at Knoxville raises potential interference concerns due to the filing of two Class A license applications, which were filed nearly five months after Petitioners' allotment proposal. Nevertheless, as demonstrated herein, the proposed Channel 25 NTSC facility at Knoxville would not cause prohibited interference to either Station WPDP-LP, Cleveland, or WKPT-LP, Kingsport, Tennessee. Moreover, KC25 has entered into interference agreements with the above LPTV stations which resolve the potential interference conflicts in a manner consistent with the public interest and the FCC's orders in the Class A rulemaking proceeding.

For the reasons stated herein, the Commission's general policy prohibiting short-spaced allotment proposals should not be applied in this unique and limited context in which the licensing of NTSC stations comes to an end. Thus, Petitioners' request for a relatively minor waiver of the Commission's distance separation requirements should be granted in accordance with Congress' explicit directive in Section 309(l) of the Communications Act.

Furthermore, even assuming, *arguendo*, that the Commission should erroneously conclude that it should not allot Channel 25 to Knoxville, the Commission should adopt Petitioners' alternative allotment proposal and substitute DTV Channel 7 for the existing Channel 26 NTSC allotment at Knoxville. As shown herein, Petitioners' alternative digital proposal would not cause prohibited interference to any other television station and would provide substantial public interest benefits.

WHEREFORE, in light of the foregoing, SWMM/Knoxville Corporation, Channel 26, Ltd., and Knoxville Channel 25, L.L.C. respectfully request that the Commission ACCEPT this supplement, GRANT their pending Petition for Rulemaking, and AMEND the TV Table of Allotments by substituting NTSC Channel 25, or, alternatively, DTV Channel 7, for the existing Channel 26 NTSC allotment at Knoxville, Tennessee.

Respectfully submitted,

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